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EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/360,422

Applicant(s)

WALKER ET AL.

Examiner

James Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-118 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-118 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Request for Reconsideration

The present office action is a response to Applicants' request for reconsideration filed on 19 August 2002.

Claims 1-118 remain and will be examined.

Response to Arguments

Applicants' arguments of 19 August 2002 have been fully considered but they are not persuasive.

Applicants argue that the Examiner has not provided Applicants a fair opportunity to overcome the 103 rejection, in that

As a preliminary matter, Applicants object to the ambiguous form of the Section 103 rejection in the present Office Action. The rejection merely consists of a long description of features of Chelliah without any mention of the specific claimed features of Applicants' invention. The Examiner does not specify which paragraphs of the rejection correspond to which features of which claims. Thus, Applicants are unable to accurately determine the particular claimed features that the Examiner is asserting are disclosed by Chelliah. Based on this objection alone, Applicants assert that the Examiner has not provided a complete rejection, nor provided the Applicants a fair opportunity to overcome the Section 103 rejection.

In response to these arguments, the Examiner believes (a) that the rejection is complete (b) that the rejection is not ambiguous (c) that the rejection consists of specific cites to the reference and to applicants' invention (d) that the rejection does not consist (or merely consist) of a long description of features present in Chelliah (e) that he has mentioned specific claimed features of applicants' invention, (f) that he has specified which paragraphs correspond to particular features of applicants' claims and their limitations.

The Examiner regrets that applicants are not able to accurately determine particular claimed features disclosed by Chelliah. The Examiner notes that he has provided applicants ample and fair opportunity *to reply* to the rejection as well as ample and fair opportunity *to overcome* the rejection under 103, where the MPEP requires that applicants be given fair opportunity *to reply* to such a rejection:

It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given *fair opportunity to reply*. (see 706.02(j) Contents of a 35 U.S.C. 103 Rejection, emphasis added).

Nevertheless, the Examiner will take this opportunity to further elaborate on the rejection and to further clarify the record. It is noted that the grounds for rejection are unchanged and that Examiner is elaborating so that applicants may more easily identify particular features of Chelliah that disclose their invention.

Applicants argue that there is a subset of claims that remains unidentified:

...with respect to some **subset** of unidentified claims, Chelliah in view of factual assertions of the Examiner. Applicants respectfully traverse these rejections...

...Further, regarding the unidentified **subset** of claims that stand rejected based upon Chelliah in view of the factual assertions of the Examiner ...

...Further, Applicants do not accept nor agree with the Examiner's characterization of the features of the unidentified **subset** of claims that stand rejected based upon Chelliah in view of the factual assertions of the Examiner...

In response to this argument, the office action stated identified Claims 1-118 as unpatentable over Cheliah et al. (US Patent 5,710,887)." The set of claims 1-118 necessarily includes any and all subsets of claims contained in claims 1-118.

Applicants state that they dispute and traverse all of Examiner's assertions of what is well known, obvious or officially noted:

Further, Applicants do not accept nor agree with the Examiner's characterization of the features of the unidentified subset of claims that stand rejected based upon Chelliah in view of the factual assertions of the Examiner as "obvious" or "well known." Applicants

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assume that the Examiner intended to take Official notice of these asserted facts that are not otherwise in the record. (page 6, last paragraph)

In each case, the officially-noted subject matter comprises the *principal evidence* upon which the rejection was based. In other words, the Examiner relies upon officially-noted subject matter to show that a feature of the rejected claim was in the prior art.

For the record, Applicants dispute all of the various assertions in the Office Action regarding what is "well known," "obvious" and/or otherwise officially-noted. Applicants likewise dispute all assertions which were not proper factual findings because they are mere unsupported conclusions. (page 7, first paragraph)

A "traverse" is a denial of an opposing party's allegations of fact.¹ Applicants' expansive characterizations do not appear to constitute a traverse of what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made.

However, even if one were to interpret applicants' statements "applicants dispute all of the various assertions..." as constituting a traverse, one would still be faced with the inquiry as to whether the traverse is adequate. An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

Applicants have not identified *any* of Examiner's factual "various assertions" that applicants believe are not of such notorious character that they are capable of instant recognition. Applicants do not deny *any* allegations of fact submitted by the Examiner.

For example, Examiner explained that he gives applicants' claims their broadest reasonable interpretation:

In addition, while applicant uses the terms such as settlement price (to describe a derived price), first, second price, there is no basis for attributing particular qualities to each. Other terms that might be used include factory price, ultimate price, product retail price,

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

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distribution price, customer price, private price, public price, buyer's price, producer price, manufacturer price, merchant price, merchandise price, product price, seller's price, maximum profit price, minimum retail price, final net price, store set price, product and service price, etc. For example, first and second price may alternatively be referred to as $p(n)$; additional amounts and values and prices may be referred to as $p(n+1)$, etc. Ultimately, a computer will store a value in a field and use the value for calculations. The computer does not care what the field is called; it is up to a computer programmer to make sure that fields are used according to their roles and functions. Similarly, subsidies may alternatively be referred to as tokens, points, coupons, discounts, rebates, pseudo card, promotions, incentives, bonus, redemption amounts, etc. A product may also be called an item, a thing, a good, a widget. A package may be called a family, a complementary combination, a basket, a group. Synonyms for customer may include user, consumer, buyer, purchaser, etc. Synonyms for retailer may include merchant, vendor, seller, etc. The number of different names that may be used is limited only by a marketing department's collective imagination. (pages 4-5 of previous office action)

Applicants do not show that their use of the above terms varies from how these terms should not be given their "plain meaning" given to the terms by those of ordinary skill in the art.

In another example, (a) identifying the statement that applicants believe are not of such notorious character capable of instant recognition, might perhaps include reciting Examiner's official notice:

Examiner takes official notice that bar codes and Point of Sales terminals are *well known* to one of ordinary skill in the art, and that printed receipts and coupons often contain bar-coded information (page 10, final paragraph of previous office action)

(b) stating that the use of bar codes, point of sales terminals, printed receipts or coupons *would not* be considered common knowledge, capable of instant recognition.

(c) stating *why* the use of bar codes, point of sales terminals, printed receipts or coupons *would not* be considered common knowledge, capable of instant recognition.

As such, Applicants' arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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Applicants argue that Examiner has not established a *prima facie* case of obviousness:

... Thus, the Examiner has not established a *prima facie* case of *obviousness* because he has not shown that this feature is in the prior art. Applicants therefore respectfully request that the Examiner withdraw his Section 103 rejection of Claims 1 to 118.

Further, regarding the unidentified subset of claims that stand rejected based upon Chelliah in view of the factual assertions of the Examiner, even if Chelliah disclosed that which the Examiner relies upon it for, which it does not, the Examiner still would not have met his burden of establishing a *prima facie* case of obviousness in that *he has not provided any motivation* to combine Chelliah with the features he describes as "*well known*" or "*obvious*." (emphasis added)

The Examiner believes he has made a *prima facie* case of obviousness.

Specifically, in response to applicants' arguments that the Examiner has not provided any motivation to combine Chelliah with features that are well known and obvious, Examiner disagrees and provides at least one example. In the prior office action, Examiner presented motivations as to why it would have been obvious to combine Chelliah with knowledge well known to those of ordinary skill in the art ("One of ordinary skill in the art of electronic commerce *would have been motivated* to permit customers to pick up one or more items of a package by visiting an item's merchant for the obvious reason that ...") (emphasis added)).

At several points, Applicants appear to argue that Examiner has relied only or primarily on official notice or recitation of well known or obvious facts for the rejection under 103(a). For example:

... In each case, the officially-noted subject matter comprises the *principal evidence* upon which the rejection was based. In other words, the Examiner relies upon officially-noted subject matter to show that a feature of the rejected claim was in the prior art...(emphasis added)

Applicants respectfully remind the Examiner that officially-noted subject matter cannot be used as the primary basis for a rejection under 103. In other words, *official notice* alone of

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what existed in the prior art is not permitted. A reference must be provided to show the scope and content of the prior art.

[the balance of page 7 contains partial quote from MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art, and includes references to *In re Ahlert*, 424 F.2d 1088 (C.C.P.A. 1969), *In re Eynde*, 480 F.2d 1364 (C.C.P.A. 1973); *In re Pardo*, 684 F.2d 912 (C. C.P.A. 1982) (which in turn quotes from *In re Ahlert*)]

Claims 1-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chelliah et al. (US Patent 5,710,887). The rejection does not present officially-noted matter alone or officially-noted matter as principal evidence, or as a primary basis for rejecting applicants' claims. The matter presented as well-known or obvious is used to supplement or clarify the teachings of Chelliah.

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves *or in the knowledge generally available to one of ordinary skill in the art*. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary [or principal] reference; nor is it that the claimed invention must be expressly suggested in *any one or all* of the references. Rather, the test is what the *combined* teachings of the references would have suggested to those of *ordinary skill in the art*. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicants argue against the combination of Chelliah with knowledge generally available to one of ordinary skill in the art at the time the invention was made. In

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response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicants cite MPEP 2144.03 and request an opportunity (a) to determine the scope of Examiner's officially-noted matter and (b) to provide applicants with an opportunity to distinguish prior art from their invention. In response to this argument, Applicants appear to have recognized and noted Examiner's statements concerning obvious, well-known and officially-noted matter. The scope of Examiner's officially-noted, obvious and well-known matter is defined by the plain meaning of the terms used -- the scope is contained in the rejection. Applicants were provided with an opportunity to distinguish their invention from the combination of prior art and knowledge generally available to one of ordinary skill in the art. As noted above, Applicants have not specifically pointed out supposed errors in the examiner's action.

Applicants quote from MPEP 2144.03 and cite *In re Ahlert*, for the proposition that assertions of technical facts ...must be supported

See, e.g., *In re Ahlert*, 424 F.2d 1088 (C.C.P.A. 1969) ("Assertions of *technical facts in areas of esoteric technology must always* be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. Allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art *should* also be supported and the appellant similarly given the opportunity to make a challenge.") (emphasis added);

Examiner notes that, for example, his notice that bar codes, point of sale terminals, printed receipts and coupons is well known and widely used in commerce.

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Their use would probably not be categorized as “*technical* facts in areas of *esoteric* technology” which otherwise might not be capable of instant recognition.

Examiner notes additional language found in MPEP 2144.03 relevant to facts noted as obvious, well-known or officially-noted:

Applicant **must** seasonably challenge well known statements and statements based on personal knowledge when they are made by the Board of Patent Appeals and Interferences. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice **must** contain adequate information or argument *to create on its face a reasonable doubt* regarding the circumstances justifying the judicial notice). (emphasis added)

Examiner notes other relevant language in *In re Ahlert*, a portion of which was quoted by applicants:

1. Evidence - Judicial notice (§ 36.20)

Patent Office appellate tribunals, where it is found necessary, may take notice of facts beyond the record which, while not generally notorious, are capable of such instant and unquestionable demonstration as to defy dispute...where applicant fails to challenge a fact judicially noticed and it is clear that he was amply apprised of such finding so as to have opportunity to make such challenge, Board's finding is considered conclusive by court. Headnote 1.

These aspects of judicial notice are primarily procedural, however, designed with the purpose in mind of fully utilizing the independent and specialized technical expertise of the Patent Office examiners while balancing the applicant's rights to fair notice and an opportunity to be heard. Equally important is the question of what role the facts so found may play in the evidentiary scheme upon which a rejection of claims is based...

...The facts so noticed serve to “fill in the gaps” which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. We know of no case in which facts judicially noticed comprised the principal evidence upon which a rejection was based or were of such importance as to constitute a new ground of rejection when combined with the other evidence previously used. . In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ at 422, 420 (CCPA 1970).

The Examiner believes that his use of notice is consistent with these guidelines.

Applicants cite (a) Col. 3, lines 5-45 and Col. 12, lines 28-50 and Col. 18, line 24

- Col. 19, line 26 to assert that Chelliah

...is clearly distinct from Applicants' claimed feature of [a] presenting the customer with a package offer which, [b] in response to detecting interest in a selected product, [c]

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states that if the customer purchases a second product along with the selected product, a specific discount on the total purchase price of both products is available [sic].

[Applicants state that the “cited passages” and “relied upon passages”] do not support that Examiner’s apparent assertion that the reference teaches Applicants’ claimed feature of [a] determining a package to be offered, [b] including at least one secondary product, [c] in response to detecting that a primary product is of interest to a customer.

In response to these arguments, the Examiner presents the following concerning determining customer interest in a product, creating a package deal and presenting a customer with a package offer that has a specific discount on the total purchase price of the package:

Determining customer interest in a product

Chelliah detects a customer’s interest based on a customer’s request for information (queries, inquiries, etc.) concerning a primary item (page 6, prior rejection).

This aspect is described at least in Col. 3, lines 5-45:

...The customer monitoring object is configured to operate by **responding to customer enquiries**, communicated through the input means, *regarding a presented item* by accessing the item database to retrieve **information** relating to said item and to present said **information** to the **customer** by means of the display; *receiving a customer’s selection of a presented item* through the input means; communicating with the pricing means to cause the cost of the item to be determined; presenting the cost to *the customer* by means of the display; receiving **customer** communications, through the input means, **indicating a desire** to receive the item; and passing a delivery initiation communication to initiate the delivery of the item to the **customer**. (Col. 3, lines 33-45, emphasis added)

Creating a package deal

Chelliah does not use the work “package” or “package deal”. Chelliah uses terms such as “basket item” and “target item” to describe secondary items that may be related to primary items and offered as a “package”. A package may be called a family, a complementary combination, a basket, a group, a bundle etc. (see above and page 5 of the previous office action).

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Chelliah package deal includes specific discounts on the total purchase price of both products singly or jointly. The discount price of the bundle is less than the sum of the individual prices of its products. For example:

The first two inputs, target_items and basket_items, together comprise the Customer's order. Target items are those items that are discountable. Basket_items are those items that are nondiscountable, but which may be required to support discounting (e.g., they may contribute to meeting a quantity requirement). (Col. 18, lines 43-48)

Chelliah discloses other types of combinations whose bundling will include discounts. For example, see at least Col. 22, lines 41-62, cited on page 8-9 of the previous office action.

If Predicate 264 is of type "Item Identifier," the conditions field contains a list containing one or more values that identify one or more items to which the pricing rule may be applied. For example, if the conditions field contains the value "XCD-100-56," the pricing rule will be applied only to purchases of the item identified in Product Database 116 as "XCD-100-56."

If Predicate 264 is of type "Item Attribute," the conditions field contains a list containing one or more values that identify an attribute of one or more items to which the pricing rule may be applied. For example, if the conditions field contains the value "blouse," then the pricing rule will be applied to all items identified in Product Database 116 as having the attribute "blouse."

If Predicate 264 is of type "Price," the conditions field contains a comparator indicator having a value such as "greater than," "less than," etc., and a comparison value to be compared to the item's price. For example, if the conditions field contains a comparator value of "greater than" and a comparison value of "10," the pricing rule will be applied to all items identified in the Product Database 116 as having a price greater than \$10.

Offering a package deal to a customer

Chelliah offers the package deal to a customer, who may accept the offered package, including discounts. Customers may pay for the items them via different types of financial accounts such as credit cards; items may also be delivered. See at least Col. 12, line 28 – Col. 13, line 9, cited on page 10 of the previous office action.

In response, the Customer passes product or service selections to the Sales Representative 114. The Sales Representative 114 obtains pricing information from the Incentives Subsystem 160 to get pricing rules, and then passing the selection list and the

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pricing rules to the Pricing Engine 120, which calculates and returns discounted prices by matching the selection list against the pricing rules using product information from the Product Database 116.

The Sales Representative 114 then calls subsystems such as Tax Engine 122 to calculate Tax and Shipping. Thereafter, the Sales Representative 114 returns a total price to the Customer 12, who returns a final order to the Sales Representative.

Thereafter, the Sales Representative 114 arranges for Payment. This includes querying the Customer for a payment method (e.g., VISA card) and a means of authenticating the identity of the Customer (e.g., a password); querying the Participant Subsystem 164 for payment information corresponding to the payment method (e.g., looking up the customer's VISA card number, which is secure from the store); calling a Payment Handler 126 to validate the password and to authorize the credit transaction with an external payment network (not shown), e.g., VISA.net.

Therefore, Applicants' assertions are not persuasive.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chelliah et al. (US Patent 5,710,887).

Chelliah discloses an interactive web-based electronic business system that includes virtual shopping carts, electronic payment mechanisms (see at least Col. 1, lines 28-47; Col. 8, lines 34-64). Chelliah shows that items may have retail prices and discounts (see at least references to Sales Representative Program Object, Col. 10, lines 44-Col. 11, line 20; and transactions and Pricing Engine, in at least Col. Col. 14, line 40-Col. 17, line 21).

The system detects a customer's interest based on a customer's request for information concerning a primary item. The system retrieves details about a primary item from a database and displays them to a customer. The system creates a package

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by presenting details concerning one or more secondary items that may be related to the primary item. The primary item's details may include the item's unique identifier, retail price, description, merchant, percent discount, etc. The details for the additional, secondary items may include those items' unique identifiers, merchant, their retail prices, applicable discounts, description, etc. (See at least Col. 3, lines 5-45 and various references to various types of prices, and at least Col. 12, lines 28-50, Col 18, line 24-Col. 19, line 26, and others concerning various types of derivable discounted prices for one or more items).

Chelliah discloses that a primary item in the database may be related to one or more secondary items in at least the following well-known ways:

- Items sold may be related as being shares in similar industries, or shares in the same company, or as being shares in companies of the Fortune 500 index or of the Dow Jones Industrials list used to calculate the Dow Jones Index. Shares may be related in that they form part of a customer's portfolio. See at least Col. 5, line 55-Col. 6, line 25.
- Items may be related in that the different items are sold by the same merchant based on demographic information collected by the mall or store Frequent buyer/flyer programs. Stores may use customer data may to let customers accumulate points that may be translated into percentage discounts of specified products and retail prices. (See at least references to demographics, in at least Col. 12, lines 30-50; point-based frequent buyer programs, at least in Col. 7, lines 16-30; Col. 20, line 30-Col. 28, line 17).

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- Items may be related in that they are both subject to in-store discounts, or coupons or other incentives offered by a merchant or a mall. A first item and a secondary item may be related in that their prices are discounted based on in-store discounts (see at least Col. 6, line 50-7, line 64; See also at least references to business rules, effective dates of various discounts, and discount programs defined by a merchant (see at least Col. 1, line 28-Col. 7, line 64).
- Chelliah provides several other examples, including “Buy 1, get 1 free.” (Col. 27, line 21-Col. 28, line 17). Thus, packages may also be created in other well-known combinations. In the following examples, discount may be from 0% to 100% of an item. Where a discount is 0%, the item is full-priced; where a discount is 100%, the item is free. Similarly, package prices and discounts may involve item-specific discounts based on points (such as in frequent-buyer or frequent-flyer programs). Alternatively, package prices and discounts may involve item-specific flat amount discounts.
 - Buy 1 discounted item **a** of merchant **A**, get 1 discounted item **a** of merchant **A**. Example: buy 1 pen [5% discount], get a second pen [discounted 100%] free.
 - Buy 1 discounted item **a** of merchant **A**, get 1 discounted item **b** of merchant **A**. For Example, buy 1 \$500 dress [10% discount], get 20% discount from a pair of shoes. Another example may include discounts of perishable goods: Buy 5 lbs of bananas, reduced by 10%, and get 3 lbs of avocados, reduced by 10%. Another example may include downloadable or in-store discounts:

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Buy 1 Michael Jackson CD [reduced by 50%], get 3 additional Michael Jackson CD's [each reduced 75%].

- Buy 1 discounted item **a** of merchant **A**, get 1 discounted item **b** of merchant **B**. Example: buy 1 \$500 dress [15% discount], get 20% discount for dinner at a local restaurant.

Chelliah discloses various types of price discounts for items, including discounts applicable on each of a combination of items, where each item has a unique identifier in a database (Col. 22, lines 63-Col. 23, line 3). The discount programs may be based on promotions, incentives, time-intervals, related items, in-store sales, coupon-based, frequent-buyer programs, quantity-related (see at least Ch, Col. 7, lines 17-23).

Chelliah discloses that an item may be sold by one of multiple merchants and that the system may store a list of all items selected by a customer as well as a reference to the merchant of each item. Chelliah also discloses that items for a package may be composed of items from one or more merchants (see at least references to customer interaction with number of merchants. See at least Col. 3, lines 47-56, Col. 6, lines 4-57; Col. 27, line 50-Col. 28, line 17).

Chelliah teaches various ways to determine a package's price, including:

- At an item level - varying an item's price over time or when an item is offered in combination with other items (see at least references to predicate segments, which may establish duration applicability of pricing rules (see at least Col. 22, lines 9-63; see also at least references to total price returned to a customer, in at

least Col. 12, lines 28-50; see at least references to pricing rules, types of adjustments, etc., in at least Col. 20, line 43-Col. 22, line 8).

- At a package level, determining a package price discloses that primary and secondary items may have various updateable and/or derivable values, including basic price, cost, price reduction percentage, adjusted price, discounts and others. Factors that may be used to arrive at an item's price alone or in combination with other items may be found in at least Col. 6, line 58-Col. 8, line 34. Thus, a package price may be less than the sum of the individual items and may also have discounts on various combinations of items.
- Discount programs, at item and/or package level, may be based on promotions, incentives, time-intervals, related items, in-store sales, coupon-based, frequent-buyer programs, quantity-related (see at least Col. 7, lines 17-23; See also references to calculating a total price, at least in Col. 12, lines 43-55; total package price calculation may include additional charges such as shipping charges, taxes, and related discounts. Merchants may change pricing and applicability information and notify customers accordingly (see also at least references to narrowcast advertising targeted at customers, Col. 12, lines 27-55; see also advertisements targeted to the public at large, Col. 20, lines 21-64).

Customers may accept the offered package, pay for them via different types of financial accounts such as credit cards. Items may be delivered (see at least Col. 12, line 28 – Col. 13, line 9).

Chelliah discloses order fulfillment and shipping, Col. 17, lines 23-30). Chelliah discloses that customers may designate one or more locations where they may pick up all or some of the purchased products (see at least Col. 3, lines 56-Col. 4, line 5). Thus, a customer may request shipment to a merchant's address where the customer may pick up the item. Since customers may designate a first merchant as recipient of items, a first merchant may permit a customer to pick up items belonging to a second merchant at first merchant's local store. Chelliah *does not* disclose having customers pick up each item of a package by visiting the appropriate merchant.

Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce to permit customers to pick up one or more items of a package by visiting an item's merchant.

One of ordinary skill in the art of electronic commerce would have been motivated to permit customers to pick up one or more items of a package by visiting an item's merchant for the obvious reason that shopping is a delightful, pleasurable activity and merchants may wish to promote sales at local stores by inviting customers to visit.

It is well known that retail stores, such as Macy's, design their retail stores so that customers are guided from one product area to another; customers may purchase last minute items or items that were not available on-line. A customer may visit a merchant to pick up cosmetics ordered on-line and may also purchase a dress. Merchants, for their part, may save their portions of shipping costs associated with a sale.

A customer may also wish to combine a visit to a local shopping center with other social occasions such as dinner with a friend. At a local restaurant, the customer might redeem an incentive offered by the restaurant as part of a package.

Chelliah discloses customer order devices, including mall and store kiosks (see at least Col. 9, lines 53-61), and in-store sales as incentives Col. 6, lines 26-57, Col. 7, lines 16-30). While in a merchant's store at a local shopping center, a customer may use a kiosk to access the system and purchase additional items. A customer may do this possibly to take advantage of discounts that are available on-line and in combination with another merchant's products. Using a mall or a store's kiosk, a customer may order items, pay for them and obtain a printed copy of a coded receipt (see at least references to generating, storing and using a receipt for later verification of an order, Figs. 8A, 8B; see at least Col. 17, line 32-Col. 18, line 44). The customer may present the coded receipt to one or more merchants who may verify payment of the package order, and deliver the items, as taught by Chelliah.

Chelliah *does not* use the term bar code or Point of Sale terminal. Chelliah *does not* specifically state that a printed receipt may include information in bar code formats. Examiner takes official notice that bar codes and Point of Sales terminals are well known to one of ordinary skill in the art, and that printed receipts and coupons often contain bar-coded information. Such information may include store or item specific information such as store id, item id, receipt or transaction information.

Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time the invention was made to include Point of Sales terminals and bar codes to present information on a printed receipt.

One of ordinary skill in the art of electronic commerce at the time the invention was made would have been motivated to include Point of Sales and bar codes to present information on a printed receipt for the obvious reason that bar codes make it possible to read information directly into a computer and to transact business in a more efficient manner, including at least avoidance of human error and illegible handwriting.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

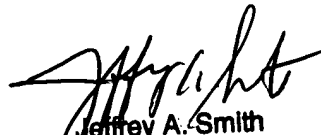
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

JA
James Zurita
Patent Examiner
Art Unit 2635
May 1, 2003


Jeffrey A. Smith
Primary Examiner